

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.785 of 2015

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Yogendra Yadav @ Jha Ji, son of Late Bhagirath Yadav, resident of village-
Narma Milkipar, P.S.- Pali, Dist- Jehanabad

.... Petitioner

Versus

1. The State of Bihar, Home (Police) Department, Patna
2. Under Secretary to Government of Bihar, Patna
3. District Magistrate, Jehanabad
4. Superintendent of Police Jehanabad

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Prasad, Advocate

For the Respondent/s : Mr. K.B. Singh, S.C. 22

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 17-08-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the order dated
28.8.2014 passed by the District Magistrate, Jehanabad in
B.C.C.A Case No. 10/D.M./2014 by which the petitioner has been
ordered to be detained till 27.8.2015.

It is not in dispute that there is no procedural flaw in the
detention proceedings nor any such ground has been raised by the
petitioner that there was any procedural laches in the past in the
detention order from its inception till its approval by the Advisory
Board and final confirmation by the State Government.



All that, learned counsel for the petitioner seeks to argue is that the order of detention is based upon two criminal cases lodged against the petitioner under Section 395 I.P.C., which were, in fact, lodged against unknown and subsequently there was a compromise in one of the cases which led to filing of the third case by the police under Section 384/34 I.P.C. on the ground of the compromise having been recorded after threatened intimidation to the informant of the first case. It is submitted that the petitioner has already been released on bail in all the three cases.

It is also the stand of learned counsel for the petitioner that since the detention is on the basis of certain criminal case lodged against the petitioner, hence the same is bad in view of law laid down by the Supreme Court in the case of *Biram Chand vs. The State of Uttar Pradesh & Ors.* : AIR 1974 SC 1161.

From a perusal of the counter affidavit and the materials on the record it is evident that the reason assigned for detention is that the petitioner is involved in cases of dacoity, loot, etc. and he has created an atmosphere of terror in the area.

This Court is further of the view that there is no law laid down by the Apex Court in *Biram Chand's* case (*supra*) that in all cases detention on the basis of previous F.I.Rs. would result in the



order of detention becoming bad; rather in the facts of the said case which related to various offences under the Essential Commodities Act and similar matters it was found that the petitioner could not make a proper representation without disclosing the defence in the criminal case, for which reason it was held that the order of detention was bad. In the present matter that is not so and the petitioner was not required to file representation disclosing his defence in individual criminal cases which are pending against him. The grounds for detention under the Bihar Control of Crimes Act are not the same as was under the Maintenance of Internal Security Act, 1971 which was the statute involved in Biram Chand's case. It is only a person who is an anti-social element against whom an order of detention can be passed in a case under the Bihar Control of Crimes Act, 1981 and thus the existence of criminal case against the said person would be normally a prior requirement before the detention could be ordered. Thus the reliance of learned counsel for the petitioner on Biram Chand's case (supra) is without any basis.

So far as the reliance by the District Magistrate on the various cases are concerned, we are of the view that the said materials cannot be considered to be insufficient for passing an order under the Bihar Control of Crimes Act. No other illegality

has been pointed out by learned counsel for the petitioner.

The writ application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

